

The Third Circuit has held: “In order to attack the factual basis for jurisdiction, the [movant] was required to submit affidavits or other proof addressing the ground on which federal jurisdiction was invoked.” Berardi v. Swanson Memorial Lodge No. 48 of Fraternal Order of Police, 920 F.2d 198, 202 (3d Cir. 1990). Natco has failed to do so.

Natco next argues that the Amended Complaint fails to state sufficient facts to make plausible any valid claim. The rationale for this argument, as stated by Natco, is that Natco bases its non-infringement defense on the covenant not to sue, and the Amended Complaint does not plead facts which rebut this defense. Natco provides no authority for the proposition that a complaint must state sufficient facts to rebut the affirmative defenses of the defendants. The Complaint need only plead sufficient facts to make the asserted claims plausible. Bell Atl. Corp. v. Twombly, 127 S. Ct. 1955, 1974 (2007). The Amended Complaint pleads sufficient facts to support an action for patent infringement under 35 U.S.C. § 271(e)(2).

Natco's motion to dismiss the Amended Complaint will be denied.

For the reasons above,

IT IS on this 2nd day of June, 2015,

ORDERED that Natco's motion to dismiss the Amended Complaint (Docket Entry No. 35) is **DENIED**.

s/ Stanley R. Chesler
Stanley R. Chesler, U.S.D.J.